IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1925 of 1992

For Approval and Signature:

***HONOURABLE* MS. JUSTICE R.M.DOSHIT**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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AMBALAL GANDAJI THAKOR & 2 - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR JB DASTOOR for Petitioners

MISS MINI NAIR AGP for Respondents

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

24th December, 2007

ORAL JUDGMENT

This petition, preferred under *Articles* 226 & 227 of the Constitution of India, arises from the judgment and order dated 23rd May, 1989 passed by the Urban Land Tribunal in Appeal No. Ahmedabad-150 of 1987.

The petitioners are the heirs and successors-in-title of one Gandaji Ataji Thakor. The said Gandaji Ataji Thakor owned lands Survey No. 326 admeasuring 14519 sq.m. and Survey No. 270/1 admeasuring 2125 sq.m at Chandlodia, and land admeasuring 35 sq.m. bearing Gram Panchayat Nos. 15 & 33 at village Chandlodia; *within* the urban agglomeration of Ahmedabad City. The said Gandaji filed declaration of his holding as required under Section 6 of the Urban Land [*Ceiling & Regulation*] Act, 1976 [hereinafter referred to as, "***the Act of 1976***"]. Pending the proceeding under the Act of 1976, the said Gandaji died, leaving the petitioners as his heirs and successors-in-title. The competent authority by its order dated 5th June, 1987 held that the total holding of the said Gandaji was 16729 sq.m. He was entitled to hold 1000 sq.m. of land [*ceiling area prescribed for the City of Ahmedabad and Ahmedabad agglomeration*]. The land admeasuring 15729 sq.m was excess vacant land liable to be acquired under the Act of 1976. Feeling aggrieved, the petitioners preferred above referred Appeal No. 150 of 1987 under Section 33 of the Act of 1976 before the Urban Land Tribunal. According to the petitioners, the

order of the competent authority was made *ex parte* in as much as the petitioners were not given opportunity to produce relevant documents. The Tribunal, by *impugned* judgment and order dated 23rd May, 1989, confirmed the order of the competent authority. Therefore, the present petition.

Pending this petition, the petitioners have filed affidavit in rejoinder to establish that irrespective of the *impugned* order, the petitioners continued to hold the excess vacant land and continued to cultivate the same. It is, therefore, the argument of the petitioners that in view of the repeal of the Act of 1976, by the Urban Land [*Ceiling & Regulation*] Repeal Act, 1999 [hereinafter referred to as, "***the Act of 1999***"], the proceeding under the Act of 1976 has stood abated.

Mr. Dastoor has appeared for the petitioners and has assailed the judgment and order passed by the Tribunal. He has submitted that the excess vacant land were agricultural lands. On the date of the Act of 1976 there was no development plan prepared in respect of the said lands. The said lands were, therefore, not "*urban land*" or "*vacant land*" within the meaning of

the Act of 1976. The provisions contained in the Act of 1976, therefore, did not apply to the said lands. He has further submitted that in any view of the matter, the petitioners having continued in possession of the excess vacant land, the proceeding initiated under the Act of 1976 stood abated in consonance with Section 4 of the Act of 1999. In support of his submissions, he has relied upon the documents annexed to the *writ* petition and the affidavit in rejoinder. Mr. Dastoor has also submitted that the said lands were ancestral lands in the hands of the aforesaid Gandaji Ataji. It was, therefore, the property of Hindu Undivided Family. On the date of the Act of 1976, the petitioner no.1, the son of the said Gandaji Ataji was major. The said Gandaji Ataji also had two sisters. Hence, the said Gandaji Ataji and his two sisters and his son, the petitioner no.1, had an equal share in the said lands. Each of them was entitled to hold land equivalent to the ceiling area i.e., 1000 sq.m.

The petition is contested by Ms. Nair. She has supported the *impugned* judgment and order passed by the Tribunal. She has denied that irrespective of the

impugned order made by the competent authority and the Tribunal, the possession of the disputed lands continued with the petitioners. She has submitted that since the order of the Tribunal, after following the procedure as envisaged by Section 10 of the Act of 1976, possession of the excess vacant land was taken over by the officer authorized in that behalf by the State Government in presence of panch on 16th December, 1991. Since then, the proposal for allotment of the said excess vacant lands for construction of houses for the weaker sections of the Society was sanctioned by the State Government by its Order dated 2nd/3rd April, 1992. She has submitted that in that view of the matter, the Act of 1999 shall have no applicability in respect of the excess vacant lands. The petition, therefore, requires to be dismissed. In support of her submission, she has relied upon the judgments in the matters of ***Anilbhai Dwarkadas Patel & Anr. vs. State of Gujarat & Ors.*** [1993 (1) GLH 1067]; of ***Ramanbhai B. Patel & Ors. vs. State of Gujarat*** [2003 (2) GLH 329]; of ***Bhikoba Shankar Dhaumal (dead) By Lrs. & Ors. vs. Mohan Lal Punchand Tathed & Ors.*** [1982 (1) SCC 680]; and in the matter of the ***Motilal Hirabhai Spg. & Weaving Mfg. Co. Limited***

vs. State of Gujarat {Special Civil Application No. 8785 of 1992 :: Decided on 20th February, 2006 {*Coram-* ***Akil A Qureshi, J***.}.

The contention that the petitioners had not been given adequate opportunity before the competent authority requires to be rejected outright. The order of the competent authority is self-explanatory. It appears that pending the proceeding before the competent authority, the declarant-Gandaji Ataji Thakor died in the year 1980. The death of the said Gandaji Ataji Thakor was not reported to the competent authority. However, in answer to the notices issued to the said Gandaji Ataji, the petitioner no.1 appeared before the competent authority. He was also represented by an advocate. At his request the hearing was adjourned time and again to facilitate the petitioner no. 1 to produce the relevant documents. He, however, failed to produce any document. It is, therefore, not right to say that the petitioners were not given opportunity before the competent authority.

The claim that the lands were ancestral land in the hands of the said Gandaji Ataji and that they were the property of Hindu Undivided Family also requires

to be rejected outright. There is nothing on the record to suggest that the said lands were the property of HUF. On the contrary, in the form filled in by the said Gandaji Ataji, the lands were shown to be his individual property. In absence of any other case made out before the competent authority or the Tribunal below, the Tribunal below has rightly held that the said Gandaji Ataji was entitled to hold 1000 sq.m of land equivalent to one ceiling area. The order that the holding of the said Gandaji to the extent of 15729 sq.m was excess does not warrant interference.

The terms "*Urban Land*" and "*Vacant Land*" are defined in Section 2 [o] & [q] of the Act of 1976 which read as under :-

2 {o} "***urban land***" means -

{i} Any land situated within the limits of an urban agglomeration and referred to as such in the master plan; or

{ii} in a case where there is no master plan, or where the master plan does not refer to any land as urban land, any land within the limits of an urban agglomeration and situated in any area included within the local limits of a municipality [*by whichever name called*], a notified area committee, a

town area committee, a city and town committee, a small town committee, a cantonment board or a panchayat,

but does not include any such land which is mainly used for the purpose of agriculture.

2 {q} "***vacant land***" means land, not being land mainly used for the purpose of agriculture, in an urban agglomeration, but does not include-

[i] land on which construction of a building is not permissible under the building regulations in force in the area in which such land is situated;

[ii] in an area where there are building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day with the approval of the appropriate authority and the land appurtenant to such building; and

[iii] in an area where there are no building regulations, the land occupied by any building which has been constructed before or is being constructed on, the appointed day and the land appurtenant to such building.

It is not in dispute that the aforesaid lands were agricultural lands and were being used for agricultural purposes on the date of the Act. However, it is admitted that under the revised master plan of 1987, the subject lands were brought within the residential zone. Thus, it was in the 1987 the subject

lands became "*urban land*" & "*vacant land*" *within* the meaning of the Act of 1976. As held by the *Hon'ble* Supreme Court in the matter of ***State of A.P & Ors. vs. N. Audikesava Reddy & Ors.*** [AIR 2002 SC 5], the date on which the subject lands became "*vacant land*" within the meaning of the Act of 1976 was the date of commencement of that Act. The State Government has not demonstrated that prior to the revised development plan of 1987, the subject lands were subject matter of development plan/master plan and that they were reserved for any purpose other than agriculture. The petitioners have relied upon the Extract of Village Form 7/12. It is evident that the lands were cultivated by the said Gandaji Ataji during his life time and by the petitioner no.1 Ambalal Gandaji, after the death of his father-Gandaji Ataji, until 1982-83. Since the year 1982-83, the lands were not cultivated or only a small part of it was cultivated. It must, therefore, be held that the subject lands became "*vacant land*" or "*urban land*" within the meaning of the Act of 1976 for the first time in the year 1987 or in the year 1982.

The competent authority ought to have considered

the factual situation as it prevailed in the year 1987/1982, the date of commencement of the Act of 1976 in respect of the subject lands. The declarant-Gandaji Ataji Thakor, predecessor in title of the petitioners, had passed away in the year 1980. The petitioners had inherited the subject lands in the year 1980. In the year 1987 or 1982, it was the petitioners who were the holders of the land. The competent authority was, therefore, required to consider the share of each of the petitioners in the subject lands and to compute the extent of the excess vacant land. *Indisputably*, the competent authority failed to consider the Explanation [ii] to Section 6 [1] of the Act of 1976; failed to consider that the commencement of the Act of 1976 in respect of the subject lands was the year 1987/1982 when the subject lands became "*vacant land*" or "*urban land*" *within* the meaning of the Act of 1976. The error committed by the competent authority has resulted into miscarriage of justice. The said error has been perpetuated by the Tribunal. In my opinion, the entire exercise undertaken by the competent authority suffers from non-application of mind and is a nullity. Consequently, the action of the State Government in vesting the subject lands in the State

Government as envisaged by Section 10 [3] of the Act of 1976 and in taking over possession of the subject lands as envisaged by Section 10 [6] of the Act of 1976 is illegal, invalid and *non-est*.

For the aforesaid reasons, the petition is allowed with cost. Rule is made absolute. The *impugned* judgment and order dated 23rd May, 1989 passed by the Urban Land Tribunal in Appeal No. Ahmedabad-150/1987 and the order of the competent authority dated 5th June, 1987 are *quashed* and set-aside. The State Government will restore the subject lands to the petitioners.

{Ms. R.M Doshit, J.}

*Prakash**

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*NB :- Reference to land "**Survey No. 270/1**" made on page no. 2 of the judgment has been substituted for "**Survey No. 260/1**" by Order dated 1st August, 2008 made below Note for Speaking to Minutes.*